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Date of Deposit: April 1, 2002

Atty. Docket No.: 14098/1013 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Edberg, Stephen C.	Examiner:	Not Yet Assigned
Serial No.:	10/036289		
Filed:	October 24, 2001	Group Art Unit:	Not Yet Assigned
Entitled:	"Detection of First Generation Environmental Sourced Microbes in an Environmentally-Derived Sample"		
		Conf No.:	Not Yet Assigned

Commissioner for Patents
Washington, D.C. 20231

INFORMATION DISCLOSURE STATEMENT
UNDER 37 CFR §§§ 1.56, 1.97 AND 1.98

Dear Sir:

In accordance with the duty of disclosure under 37 CFR § 1.56, Applicant submits this Information Disclosure Statement pursuant to 37 CFR §§ 1.97 and 1.98 in the above-identified application for consideration by the Patent Office. A listing of the cited documents is enclosed, as well as, for the Examiner's convenience, copies of documents (1-3) on the list. Pursuant to CFR § 1.97(b)(3), because this Statement is being submitted before the first Office Action on the merits, no fee is required. Please note that the rest of the documents listed on the PTO Form-1449 are **not** enclosed because they were filed already in the parent application (No.: 08/465,010).

Applicant does not intend to represent that any of the documents submitted herein are material prior art to this invention or that the list represents an exhaustive search of documents related to this invention.

The following documents are submitted:

1. November 24, 1997 Markman Ruling relating to U.S. Patent No. 4,925,789; Environetics, Inc. et al. v. Millipore Corp. (2:92CV825).

In this Ruling, U.S. District Court Judge Arterton held that the claim term which discloses a "specific medium" means a medium that will support reproductive growth of only the target microbe.

2. June 4, 2001 Ruling on Cross Motion for Summary Judgment relating to U.S. Patent Nos. 4,925,789, 5,429,933 and 5,780,259; Stephen C. Edberg et al. v. CPI (3:98CV716).

In this Ruling granting summary judgment for the defendant, U.S. District Court judge Arterton held that the subject patents claim a medium in which only target microbes will reproduce in log phase growth. This ruling is currently under appeal to the Court of Appeals for the Federal Circuit.

3. August 16, 2001 Ruling on Plaintiff's Motion for Reconsideration of the June 4, 2001 Ruling.

In this Ruling, U.S. District Court Judge Arterton denied plaintiffs' motion for reconsideration of the June 4 Ruling.

Applicant respectfully requests that the documents submitted herein be considered and made of record in this application. Upon request, Applicants will provide the Examiner with copies of any pleadings associated with the above Rulings (briefs, hearing transcripts, etc.).

Respectfully submitted,

Date: April 1, 2002

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		Conf. No.:	Unknown

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.10

I hereby certify that the paper (and any paper or fee referred to as being enclosed) is being deposited with the United States Postal Service using Express Mail to Addressee Service, under 37 C.F.R. Section 1.10, **Express Mail Label No. EL326924173US** on this date, **April 1, 2002**, postage prepaid, in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231.

Kathleen Williams
Name of Person Mailing Paper

Signature of Person Mailing Paper

Commissioner for Patents
Washington, D.C. 20231

TRANSMITTAL LETTER

Enclosed for filing in the above-identified patent application, please find the following documents:

1. Information Disclosure Statement;
2. Form PTO-1449
3. Copies of Cited References (1-3); and
4. Return Post Card.

The Commissioner for Patents is hereby authorized to charge any additional fees or credit any overpayment in the total fees to Deposit Account No. 16-0085, Reference No. 14098/1013. A duplicate of this transmittal letter is enclosed for this purpose.

Respectfully submitted,

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USPTO Form 1449 U.S. Department of Commerce
Patent and Trademark Office

INFORMATION DISCLOSURE STATEMENT

Attorney Docket No.	Serial No.
14098/1013	10/036289
Applicant(s):. Edberg, Stephen C.	
Filing Date: October 24, 2001	Group:

U.S. PATENT DOCUMENTS

Examiner Initial		Patent No.	Date	Name	Class	Subclass	Filing Date (if appropriate)
	4	4812409	May 14, 1989	Babb, et al.	435	7	
	5	5292644	March 8, 1994	Berg			
	6	3496066	February 17, 1970	Berger, et al.			
	7	3870601	March 11, 1975	Warren, et al.			
	8	4129483	Dec 12, 1978	Bochner			
	9	4235964	Nov 25, 1980	Bochner			
	10	4208480	June 17, 1980	D'Amato, et al.			
	11	4925789	May 15, 1990	Edberg	435	38	
	12	5429933	July 4, 1995	Edberg			
	13	3206317	Sept 14, 1965	Golber			
	14	4622297	Nov 11, 1986	Kappner, et al.			
	15	4675289	June 23, 1987	Kanou, et al.			
	16	4591554	May 27, 1986	Koumura, et al.			
	17	4245043	Jan 13, 1981	Lund			
	18	5393662	Feb 28, 1995	Roth, et al.			
	19	5004684	April 2, 1991	Simpson, et al.			
	20	4803162	Feb 7, 1989	Smith, et al.			
	21	4837154	June 1989	Spiegel	435	253.6	
	22	5610029	March 11, 1997	Ehrenfeld	435	34	
	23	5242805	Sept 7, 1993	Naleway	435	18	
	24	5605812	Feb 25, 1997	Zomer	435	38	
	25	5620865	April 15, 1997	Chen	435	34	
	26	5633144	May 27, 1997	Bitton	435	38	

FOREIGN PATENT DOCUMENTS

Examiner Initial		Document No.	Date	Country	Class	Subclass	Translation	
							YES	NO

Dup

/	27	0332752	Sept 20, 1989	EPA (Giammanco)				
/	28	2005410	Sept 28, 1978	GP (Gayral)				
/	29	0025467	Sept 12, 1979	EPA (Rambach,et al)				
/	30	0059645	March 3, 1982	EPA (James)				
/	31	3419327	May 24, 1984	Germany (Backes)				

OTHER DOCUMENTS (including Author, Title, Date, Pertinent Pages, etc.)

1.	/	November 24, 1997 Markman Ruling relating to U.S. Patent No.: 4,925,789; Environetics, Inc. et al. V. Millipore Corp.
2.	/	June 4, 2001 Ruling on Cross Motion for Summary Judgement relating to U.S. Patent Nos. 4,925,789; 5,429,933 and 5,780,259; Stephen C. Edberg, et al. V. CPI (3:98CV716).
3.	/	August 16, 2001 Ruling on Plaintiffs Motion for Reconsideration of the June 4, 2001 Ruling.
32.	/	"Bacteriological Ambient Water Quality Criteria for Marine and Fresh Recreational Waters", Ambient Water Quality Criteria for Bacteria, USEPA (1986)
33.	/	Berg, et al., "Rapid Detection of Total and Fecal Coliforms in Water by Enzymatic Hydrolysis of 4-Methylumbelliferone-ß-D-Galactoside," Applied and Environmental Microbiology 54:2118-2112 (1988).
34.	/	Brenner, et al., "New Medium for the Simultaneous Detection of Total Coliforms and Escherichia coil in Water," Applied and Environmental Microbiology 59:3534-3544 (1993).
35	/	Cabelli, et al., "A Marine Recreation Water Quality Criterion Consistent with Indicator Concepts and Risk Analysis," Journal WPCF 55:1306-1314 (1983).
36	/	Cabelli, "Swimming-Associated Illness and Recreational Water Quality Criteria," Wat. Sci. Tech. 21:13-21 (1989).
37	/	Dahlen and Linde, "Screening Plate Method for Detection of Bacterial ß-Glucuronidase," Applied Microbiology 26:863-866 (1973).
38	/	Damare, et al., "Simplified Direct Plating Method for Enhanced Recovery of *Escherichia coli* on Food," J. Food Science 50:1736-1738 (1985).
39	/	DeMan, "The Probability of Most Probable Numbers," European J. Appl. Microbiol 1:67-78 (1975).
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41	/	Donnelly and Hartman, "Gentamicin-Based Medium for the Isolation of Group D Streptococci and Application of the Medium to Water Analysis," Applied and Environmental Microbiology 35:5786-581 (1978).
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43	/	Edberg and Kontnick, "Comparison of ß-Glucuronidase-Based Substrate Systems for Identification of *Escheria coli*," J. Clinical Microbiology 24:368-371 (1986).
44	/	Feng and Hartman, "Fluorogenic Assays for Immediate Confirmation of *Escheria coli*," Applied and Environmental Microbiology 43:1320-1329(1982).

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45		Gatti and Nevlani, "A new Simple Medium for the Detection of *Enterococcus Faecalis* and *Enterococcus faecium* by Measurement of Conductance Changes" Letters in Applied Microbiology 17:72-74 (1993).
46		Hach Co. Catalog, p. 10, Loveland Colorado, May 1, 1986, Catalog Contained same items.
47		Hansen and Yourassowsky, "Detection of ß-Glucuronidase in Lactose-Fermenting Members of the Family *Enterobacteriaceae* and Its Presence in Bacterial Urine Cultures," J. Biol. Chem. 20:1177-1179 (1984).
48		Hernandez, et al. "MPN miniaturized Procedure for the Enumeration of Faecal Enterococci in Fresh and Marine Waters: The Must Procedure," Wat. Res. 27:597-606 (1993).
49		Jay, Modern Food Microbiology, 4th ed., pp. 113-121 (1992).
50		Kendall, et al., "Observations of the Relative Constancy of Ammonia Production by Certain Bacteria," J. Infectious Diseases 13:425-428 (1913).
51		Kilian and Bulow, "Rapid Identification of Enterobacteriaceae," Acta Path. Microbiol. Scand. Section B 87:271-276 (1979).
52		Knutson and Hartman, "Comparison of Fluorescent Gentamicin-Thallous-Carbonate and KF Streptococcal Agars to Enumerate Enterococci and Fecal Streptococci in Meats", Applied and Environmental Microbiology 59:936-938 (1993).
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55		Mooney, et al. Testing the Waters: A National Perspective on Beach Closings, Natural Resources Defense Council, pp. 1-67 (1992).
56		Peeler, et al., "Chapter 6- The Most Probably Number Technique," Compendium of Methods for the Microbiological Examination of Foods, 3rd ed., pp. 105-120, Vanderzant and Splittstoesser eds., American Public Health Association (1992).
57		Robinson, B., "Evaluation of a Fluorogenic Assay for Detection of *Escheria coli* in foods," Applied and Environmental Microbiology 48: 285-288 (1984).
58		Sarhan and Foster, "A Rapid Fluorogenic Method for the Detection of *Escherichia coli* by the production of ß-glucuronidase," J. Applied Bacteriology 70:394-400 (1991).
59		Standard Methods for the Examination of Water and Waste Water, 18th ed., Greenberg et al. eds, pp. 9-96 to 9-73 (1992).
60		Standard Methods for the Examination of Water and Waste Water, 18th ed., Greenberg et al. eds, pp. 9-45 to 9-64 (1992).
61		Thomas, "Bacterial Densities from Fermentation Tube Tests," J. Am. Water Works Assoc. 34:572-576 (1942).
62		Trepta and Edberg, "Esculinase (ß-glucosidase) for the Rapid Estimation of Activity in Bacterial Utilizing a Hydrolyzable Substrate, *p*-nitropheny-ß-D-glucopyranoside," Antonie van Leeuwenhoek 53:273-277 (1987).
63		Trepta and Edberg, "Methylumbelliferyl-ß-D-Glucuronide-Based Medium for Rapid Isolation and

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	✓	Identification of *Escherichia coli*," J. Clinical Microbiology 19:172-174 (1984).
64 ✓		Ur and Brown, "Impedance Monitoring of Bacterial Activity," J. Med. Microbiol.8:19-28 (1975).
EXAMINER		DATE CONSIDERED

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

**Copies of references not provided at the time of this submission.

Dup.